

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DASARATHI RAGHUNATH,

Petitioner,

No. C 07-6285 PJH (PR)

vs.

EDMUND JERRY BROWN, Attorney  
General,

**ORDER FOR PETITIONER TO  
SHOW CAUSE WHY  
PETITION SHOULD NOT BE  
DISMISSED**

Respondent.

This habeas petition was filed by a detainee at the Eloy Detention Center in Eloy, Arizona. The petition, which is brought under 28 U.S.C. § 2254, is directed to petitioner's criminal conviction in Santa Clara County, which is in this district.

In the petition Raghunath alleges the following: The conviction being challenged was entered in 1992 pursuant to petitioner's plea of guilty to the felony of annoying a child, see Cal. Penal Code § 647.6, and to the misdemeanor of indecent exposure, see Cal. Penal Code § 314. Sentence was suspended and petitioner was placed on probation for three years. In 2004, having successfully completed probation, the criminal record was expunged.<sup>1</sup> Petitioner is now detained by ICE for deportation because of the conviction.

The United States Court of Appeals for the Ninth Circuit has addressed the issue of whether a petitioner who is no longer "in custody" on the state sentence and is held for deportation can attack the sentence by way of a habeas petition under Section 2254, like this one, or perhaps by way of a petition under 28 U.S.C. § 2241. See *Resendez v.*

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<sup>1</sup> Petitioner does not say why the expungement was so long after completion of probation.

1 *Kovensky*, 416 F.3d 952 (9th Cir. 2005). The court held that neither is permissible. *Id.* at  
2 961.

3 In view of *Resendez*, it appears that petitioner cannot maintain this federal habeas  
4 action.<sup>2</sup> He is **ORDERED** to show cause within thirty days of the date this order is entered  
5 why this case should not be dismissed. If he fails to establish cause not to dismiss it, or if  
6 he does not respond, this case will be dismissed and the file will be closed.

7 **IT IS SO ORDERED.**

8 Dated: December 21, 2007.

  
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PHYLLIS J. HAMILTON  
United States District Judge

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23 <sup>2</sup> In *United States v. Kwan*, 407 F.3d 1005 (9th Cir. 2005), the Ninth Circuit reversed  
24 the denial of a petition for a writ of coram nobis filed by an INS detainee and directed to an  
25 expired federal conviction. *Id.* at 1011-12. The United States Supreme Court has specifically  
26 said that coram nobis is an appropriate way to attack an expired federal conviction, *United*  
27 *States v. Morgan*, 346 U.S. 502, 505 n.4 (1954), so the propriety of using it was not at issue  
28 in *Kwan*. Coram nobis, however, is not applicable to state convictions such as petitioner's.  
*See Sinclair v. Louisiana*, 679 F.2d 513, 513-15 (5th Cir. 1982); *see also Yasui v. United*  
*States*, 772 F.2d 1496, 1498 (9th Cir.1985) ( "the writ of error coram nobis fills a void in the  
availability of post-conviction remedies in federal criminal cases"); *Madigan v. Wells*, 224 F.2d  
577, 578 n.2 (9th Cir. 1955) (writ of error coram nobis can only issue to aid jurisdiction of court  
in which conviction was had). The court thus will not sua sponte construe the petition as being  
for coram nobis.